



General Assembly

February Session, 2002

**Amendment**

LCO No. 5466

\*SB0042805466SD0\*

Offered by:

SEN. WILLIAMS, 29<sup>th</sup> Dist.  
REP. STRATTON, 17<sup>th</sup> Dist.  
SEN. JEPSEN, 27<sup>th</sup> Dist.  
SEN. PETERS, 20<sup>th</sup> Dist.  
SEN. GUNTHER, 21<sup>st</sup> Dist.

SEN. MCKINNEY, 28<sup>th</sup> Dist.  
SEN. ANISKOVICH, 12<sup>th</sup> Dist.  
REP. WIDLITZ, 98<sup>th</sup> Dist.  
REP. BACKER, 121<sup>st</sup> Dist.

To: Subst. Senate Bill No. 428

File No. 384

Cal. No. 244

**"AN ACT CONCERNING MINOR REVISIONS TO THE  
ENVIRONMENTAL PROTECTION STATUTES."**

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- 1 After line 88, insert the following:
- 2 "Sec. 4. Section 26-194 of the general statutes is repealed and the
- 3 following is substituted in lieu thereof (*Effective from passage*):
- 4 (a) The Commissioner of Agriculture may lease in the name of the
- 5 state, under such regulations as he may prescribe and for a period not
- 6 longer than ten years, all shellfish areas that have been conveyed to the
- 7 state or placed under state jurisdiction by the town of West Haven and
- 8 any undesignated grounds, within the exclusive jurisdiction of the
- 9 state, for the purpose of planting and cultivating shellfish. The
- 10 authority herein conferred shall include the Cornell Reef, Portchester,
- 11 Great Captain's Island, Field Point and Greenwich Point natural beds

12 as located and described in section 3295 of the general statutes,  
13 revision of 1918. Any person desiring to lease grounds for such  
14 purpose shall make application in writing to the commissioner and all  
15 grounds leased by authority of the provisions of this section shall be  
16 leased to the highest responsible bidder, for a minimum fee of two  
17 dollars per acre. Such lease or lease renewal shall require the lessee to  
18 make a good faith effort to cultivate and harvest shellfish from the  
19 leased area. Such lease or lease renewal shall prohibit the lessee from  
20 entering into a contract with another person whereby the lessee agrees  
21 not to cultivate and harvest shellfish for any period of time. No lessee  
22 may enter into negotiations or an agreement with a third party  
23 concerning said lease unless the Department of Agriculture and the  
24 Attorney General are parties to such negotiations and agreement and  
25 have approved of such agreement. The form of such application and  
26 lease shall be approved by the Attorney General, and all such leases  
27 shall be recorded in the records of the commissioner. No lease shall be  
28 granted to a resident of a state which does not lease shellfish grounds  
29 to residents of this state, except that any nonresident who was granted  
30 a lease on or before October 1, 1985, may, upon the expiration of such  
31 lease, apply for a renewal or further lease as provided in this section.  
32 The commissioner shall grant any such lease to nonresidents upon the  
33 same terms and conditions as to residents of this state. Any lessee or  
34 holder of oyster ground, on the expiration of any lease thereof which  
35 has been or which may be granted, shall, upon application to the  
36 commissioner, have the preference in the reletting of such ground for a  
37 like term to that granted in the original lease, unless such applicant, at  
38 the time for granting such application, is in arrears for rent on the  
39 original lease of such ground. Such application for such renewal or  
40 further lease shall be granted without notice or advertisement of the  
41 pendency thereof; provided no renewal or further lease of such ground  
42 shall be granted when the commissioner, for cause, ceases to lease such  
43 ground for oyster culture and the provisions of subsection (b) of this  
44 section are made part of any such renewal. All assignments or  
45 transfers of leases shall be subject to the approval of the commissioner  
46 and shall be recorded in his records. Any person who interferes with,

47 annoys or molests another in the enjoyment of any lease authorized by  
48 the provisions of this section shall be subject to the penalties provided  
49 in section 26-237. The provisions of sections 26-212, 26-215 and 26-232  
50 shall not apply to any shellfish grounds leased pursuant to the  
51 provisions of this section.

52 (b) On and after June 1, 2002, any new lease or renewal of a lease  
53 issued by the commissioner, pursuant to subsection (a) of this section,  
54 shall be subject to the following additional provisions: (1) If the siting  
55 council approves a permit for a utility line or other public use structure  
56 that will cross a leased area, that portion of the leased area to be  
57 affected by such utility line or other public use structure shall revert to  
58 the state and the Commissioner of Agriculture shall notify the lessee of  
59 such reversion and the effective date of such reversion; (2) the  
60 permittee of such utility line or public use structure shall be  
61 responsible to pay a lease fee to the commissioner for any such portion  
62 of the leased area that reverts to the state pursuant to subdivision (1) of  
63 this subsection and the former lessee of such area shall not be  
64 responsible for payment of any lease fee for such reverted area; (3) the  
65 holder of any lease described in subdivision (1) of this subsection shall  
66 have nine months from the date of notice of such reversion to remove  
67 or relocate any shellfish from those areas scheduled to revert to the  
68 state; (4) any costs incurred by a lessee pursuant to subdivision (3) of  
69 this subsection shall be reimbursed by the utility line or public use  
70 structure permittee; (4) the commissioner shall make a reasonable  
71 effort to enter into new lease agreements for new grounds with any  
72 lessee who elects to relocate shellfish pursuant to subdivision (3) of  
73 this subsection; (5) the commissioner shall assess upon the permittee of  
74 a utility line or public use structure that crosses such reverted grounds  
75 a one-time offset fee, the proceeds of which shall be sufficient to offset:  
76 (A) Any costs associated with the repair and restoration of shellfish  
77 beds that adjoin such reverted grounds and sustained damage as a  
78 result of the construction or installation of such utility line or public  
79 use structure; and (B) all costs associated with the survey and  
80 establishment of that portion of the leased grounds that revert to the

81 state. Nothing in this subsection shall be construed to prohibit the state  
82 or a lessee from instituting legal action to recover damages from any  
83 such permittee of a utility line or public use structure that crosses any  
84 shellfish area or leased grounds for those damages incurred by the  
85 state or lessee which are related to the installation, construction or  
86 presence of such line or structure.

87 (c) The commissioner shall assess on the permittee of any utility line  
88 or public use structure that crosses any shellfish area, leased grounds  
89 or grounds of Long Island Sound within the jurisdiction of the state an  
90 annual host payment fee of no less than twenty-five cents per linear  
91 foot for the entire length of such line or structure, the proceeds of  
92 which shall be used for the restoration and seeding of shellfish beds in  
93 the state including, but not limited to, grants for the restoration and  
94 seeding of shellfish beds in the state. The commissioner, in accordance  
95 with chapter 54, may issue regulations concerning the requirements  
96 and application procedures for such grants.

97 ~~[(b)]~~ (d) The commissioner may designate an agent within the  
98 department to exercise the authority of said commissioner under this  
99 section.

100 Sec. 5. Section 26-240 of the general statutes is repealed and the  
101 following is substituted in lieu thereof (*Effective from passage*):

102 Any person desiring to plant or cultivate oysters, clams or mussels,  
103 in any waters within town jurisdiction, may apply in writing, to the  
104 shellfish commission or to selectmen authorized to act, of the town  
105 where such grounds are situated, to designate a suitable place to be  
106 used by him for that purpose, and such commission or selectmen may  
107 make such designation and such applicant shall make and stake out  
108 such place and may enclose it with buoys or with stakes, set at suitable  
109 distances and distinctly visible above the surface at high water. Such  
110 designation shall require the applicant to make a good faith effort to  
111 cultivate and harvest shellfish from the designated area. Such  
112 designation shall prohibit the applicant from entering into a contract

113 with another person where the applicant agrees not to cultivate and  
114 harvest shellfish for any period of time except upon approval by the  
115 shellfish commission or selectmen, as applicable. Such designation  
116 shall be subject to the provisions of subsection (b) of section 26-194, as  
117 amended by this act, in that on and after June 1, 2002, any portion of  
118 such a designation issued by the shellfish commission or selectmen of  
119 a town that is to be affected by a crossing utility line or public use  
120 structure shall revert to the state and the Commissioner of Agriculture  
121 shall so notify such designee of the reversion and the effective date of  
122 such reversion. In the event of such reversion: (1) The permittee of the  
123 crossing utility line or public use structure shall pay a lease fee to the  
124 commissioner and the designee shall not pay any lease moneys to the  
125 town for that reverted portion of such designation; (2) the designee  
126 shall have nine months from the date of notice of such reversion in  
127 which to relocate or remove any shellfish from those areas scheduled  
128 to revert to the state; (3) any costs incurred by such designee pursuant  
129 to subdivision (2) of this subsection shall be reimbursed by the  
130 permittee of any such crossing utility line or public use structure; (4)  
131 the shellfish commission or selectmen of such town shall make  
132 reasonable efforts to enter into a new designation for new grounds  
133 with those designees that elect to relocate shellfish pursuant to  
134 subdivision (2) of this subsection; (5) the commissioner shall assess  
135 upon any permittee of a utility line or other public use structure which  
136 crosses any such designation a one-time offset fee, the proceeds of  
137 which shall be sufficient to offset: (A) The reimbursement by the state  
138 to the town of those revenues lost by such town due to the reversion of  
139 such designation, or portion thereof, to the state; (B) any costs  
140 associated with the repair and restoration of shellfish beds that adjoin  
141 such reverted designation and which sustained damage as a result of  
142 the construction or installation of such utility line or public use  
143 structure; and (C) any costs associated with the survey and  
144 establishment of such state reversion. Nothing in this subsection shall  
145 be construed to prohibit the state or a designee from instituting legal  
146 action to recover damages from any such permittee of a utility line or  
147 public use structure that crosses any shellfish area or designated

148 grounds for those damages incurred by the state or lessee which are  
149 related to the installation, construction or presence of such utility line  
150 or public use structure. Such commission or selectmen shall make a  
151 written description of such designation and enclosure, by ranges or  
152 otherwise, as may be most convenient, which shall state the time of  
153 such designation. The money derived from such designation by  
154 selectmen shall be paid to the town in which the same is made. The  
155 money derived from a designation by a shellfish commission shall be  
156 paid to the commission. A designation may be made to several in  
157 common, as well as to individuals. No such designation by the  
158 commission or the selectmen shall become effective or be established  
159 until after a public hearing in relation thereto has been held by the  
160 commission or selectmen authorized to act for that purpose at which  
161 parties in interest and citizens shall have an opportunity to be heard.  
162 Notice of the time and place of such hearing shall be published in a  
163 newspaper having a substantial circulation in such municipality at  
164 least twice at intervals of not less than two days, the first not more than  
165 fifteen days and the last not less than two days before such hearing. A  
166 copy of the written application for the designation shall be filed in the  
167 office of the town clerk in such municipality for public inspection at  
168 least fifteen days before such hearing and shall be published in full in  
169 such newspaper.

170 Sec. 6. Section 26-266 of the general statutes is repealed and the  
171 following is substituted in lieu thereof (*Effective from passage*):

172 The selectmen of the town of Branford or shellfish commission  
173 established in accordance with section 26-257a shall have charge of all  
174 the shellfisheries and shell and shellfish grounds lying in said town not  
175 granted to others and not under the jurisdiction of the Commissioner  
176 of Agriculture, between the center line of the Farm or East Haven  
177 River and the Guilford town line and below mean high-water mark,  
178 with power to issue licenses for the taking of shellfish and shells  
179 therefrom and to designate the quantities of such shellfish and shells to  
180 be taken, the sizes of such shellfish and the methods of taking. They  
181 shall also have power to restrict the taking of such shellfish and shells

182 from certain designated areas for periods not in excess of one year. The  
183 grants of all areas of shellfish grounds lying within the boundaries of  
184 the town of Branford upon which no tax has been paid for a period of  
185 three years preceding shall be deemed vacated and such areas shall  
186 revert to the town of Branford and become available for further grant  
187 by the selectmen or shellfish commission of said town. Before making  
188 a further grant, the selectmen or shellfish commission shall determine  
189 if such grounds are suitable for public use and any part thereof so  
190 determined shall not be available for such grant. Such grant shall  
191 require the applicant to make a good faith effort to cultivate and  
192 harvest shellfish from the designated area. Such grant shall prohibit  
193 the applicant from entering into a contract with another person  
194 whereby the applicant agrees not to cultivate and harvest shellfish for  
195 any period of time, except upon approval by the shellfish commission  
196 or selectmen, as applicable. Such grant shall be subject to the  
197 provisions of subsection (b) of section 26-194, as amended by this act,  
198 in that on and after June 1, 2002, any portion of such a grant issued by  
199 the shellfish commission or selectmen of the town of Branford that is to  
200 be affected by a crossing utility line or public use structure shall revert  
201 to the state and the Commissioner of Agriculture shall so notify such  
202 grantee of such reversion and the effective date of such reversion. In  
203 the event of such reversion: (1) The permittee of such crossing utility  
204 line or public use structure shall pay to the commissioner a lease fee on  
205 that portion of such grant that reverts to the state and the grantee shall  
206 not pay any moneys to the town for that reverted portion of such  
207 grant; (2) the grantee shall have nine months in which to relocate or  
208 remove any shellfish from those areas scheduled to revert to the state;  
209 (3) any costs incurred by such grantee pursuant to subdivision (2) of  
210 this subsection shall be reimbursed by the permittee of any such  
211 crossing utility line or public use structure; (4) the shellfish  
212 commission or selectmen of the town of Branford shall make  
213 reasonable efforts to issue a new grant to those grantees who elect to  
214 relocate shellfish pursuant to subdivision (2) of this subsection; (5) the  
215 commissioner shall assess upon any permittee of a crossing utility line  
216 or public use structure a one-time offset fee, the proceeds of which

217 shall be sufficient to offset: (A) The reimbursement by the state to the  
218 town of Branford of those revenues lost by such town due to the  
219 reversion of such grant, or portion thereof, to the state; (B) any costs  
220 associated with the repair and restoration of shellfish beds that adjoin  
221 such reverted grant and which sustained damage as a result of the  
222 construction or installation of such utility line or public use structure;  
223 and (C) any costs associated with the survey and establishment of such  
224 state reversion. Nothing in this subsection shall be construed to  
225 prohibit the state or a grantee from instituting legal action to recover  
226 damages from any such permittee of a utility line or public use  
227 structure that crosses any shellfish area or granted grounds for those  
228 damages incurred by the state or grantee which are related to the  
229 installation, construction or presence of such utility line or public use  
230 structure."